

**UNITED STATES DISTRICT COURT**  
**WESTERN DISTRICT OF LOUISIANA**  
**MONROE DIVISION**

**UNITED STATES OF AMERICA**

**Cr. A. No. 02-30043-05**

**VERSUS**

**JUDGE ROBERT G. JAMES**

**KERRY NATION**

**\_\_\_\_\_MAG. JUDGE KAREN L. HAYES**

**RULING**

Before the Court is Defendant Kerry Nation's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence [Doc. No. 484]. On November 5, 2007, Magistrate Judge Karen L. Hayes issued a Report and Recommendation [Doc. No. 570], recommending that the motion be granted. The Magistrate Judge further recommended that the Government be ordered to reinstate its plea offer, but that the Government would not be prohibited from filing a notice of statutory enhancement pursuant to 21 U.S.C. §§ 841 and 851(a)(1).

On November 20, 2007, Defendant filed an objection [Doc. No. 572] to the Report and Recommendation. The Government did not respond to the objection.

For the following reasons, the Court ADOPTS IN PART and DECLINES TO ADOPT IN PART the Magistrate Judge's Report and Recommendation as follows:

To the extent that the Magistrate Judge recommended that the Government be allowed to file a notice of statutory enhancement at any time prior to the selection of the jury, the Court DECLINES TO ADOPT the recommendation. The Court agrees with Defendant that, in order for the remedy to be tailored to the constitutional injury, Defendant should be in the same position he was in at the time of trial. Thus, the Government will not be permitted to file a notice

of statutory enhancement until after jury selection has begun (should Defendant choose to go to trial). In this way, Defendant may then raise an objection to the timeliness of the notice, as he could have done in his previous trial. The Court may consider and rule on the issue, and it will be preserved for consideration by the United States Court of Appeal for the Fifth Circuit.

The Court otherwise agrees with and ADOPTS the analysis and conclusion of the Magistrate Judge.

MONROE, LOUISIANA, this 29th day of January, 2008.

  
ROBERT G. JAMES  
UNITED STATES DISTRICT JUDGE